IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5808/2007

SMT. SHOBHA BADAYA & ANR. Vs. STATE OF RAJASTHAN & ANR.

Date: 16.08.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. A.K. Gupta for the accused-petitioners.
Mr. B.S. Chhaba, Public Prosecutor for the State.
Mr. S.K. Gupta for the complainant-respondent No.2

****

By way of this writ petition the accused-petitioners have prayed that FIR No. 68/2007, registered at Police Station Mahila Thana, Jaipur City (East) for the offences under Sections 498-A, 328 and 313 IPC be quashed and set aside.

The quashment of the FIR is prayed on the ground that the offence under Section 313 IPC is prima-facie not made out against the accused-petitioners as also offence under Sections 498-A IPC and 328 IPC and the FIR which has been lodged is just to harass the petitioners. Therefore, the FIR in question deserves to be quashed and set aside.

He also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of

Bhajan Lal and submits that as per the ratio decided by the Hon'ble Supreme Court, the present case is a case wherein this Court can exercise the extraordinary power vested under Article 226 of the Constitution of India for quashment of the FIR.

Per contra, learned counsel appearing for the complainant-respondent No.2 Mr. S.K. Gupta has moved an application for vacation of ex parte interim order dated 03.08.2007 granted by this Court, by which pursuant to the FIR, arrest of the petitioners has been stayed.

Mr. S.K. Gupta has drawn attention of this Court towards Annexure-1, the statement of Smt. Bhawna recorded by the Additional Civil Judge (Sr. Division) & Additional Chief Judicial Magistrate No.7, Jaipur City, Jaipur. In the aforesaid statement, the daughter-in-law of the petitioners has categorically stated that her husband Amit, mother-in-law Shobha and father-in-law Naresh have poisoned her.

Mr. S.K. Gupta further submits that the petitioners have got remedy to seek bail and placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Bhajan Lal** and further placed reliance on the judgment of the Hon'ble Supreme Court rendered in the case of **State of Madhya Pradesh**

Vs. Awadh Kishore Gupta & Ors, (2003) IV SLT 455 (SC) to show that this Court should not exercise power vested under Article 226 of the Constitution of India for quashing the FIR if it is not found false at its face value.

I have heard rival submissions of the respective parties and have also carefully gone through judgments referred by the respective parties as well as the FIR and the statement of Smt. Bhawna.

It cannot be said that FIR at its face value is false and while exercising power under Article 226 of the Constitution of India and upon careful perusal of the principle laid down by the Hon'ble Supreme Court in the case of Bhajan Lal, this is not a case where any interference is required by this Court and in the considered view the FIR cannot said to be false at its face value.

However, the petitioners are at liberty to move anticipatory/regular bail before the appropriate forum and if any case is not made out under Section 313 IPC, then the petitioners may invoke the jurisdiction available to them, but in any case, this is not proper forum and as observed herein above, I find no merit in the writ petition.

Consequently, the writ petition fails and the same is hereby dismissed. The ex parte interim order dated 03.08.2007 granted by this Court also stands rejected.

The observations made by this Court shall not come in way and the other forum shall not influence with the observations made herein above as this writ petition is only confined to quashment of the FIR.

(K.S. RATHORE),J.

/KKC/